IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 933 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VAGHRI RASIKBHAI CHANDUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 933 of 1992

MR JK PARMAR for Petitioner No. 1 (Absent)

..... for Petitioner No. 2

MR KP RAVAL APP for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 07/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. The appellants-accused have challenged in this appeal the impugned judgment and order of conviction and sentence passed by the learned Judge on 29.8.1992 in Special (Atrocities) Case No.17/91 convicting for the offences under Sections 302, 392 and 397 read with Section 34 IPC and also for the offences under Section 3(2) and (5) of the Atrocities Act and sentencing them to suffer life imprisonment for the offences under Section 302 read with Section 34 IPC. However, no separate order of sentence was passed for the remaining offences under Sections 392 and 397 IPC and Section 3(2) and (5) of the Atrocities Act. The appellant-accused No.1-Vaghri Rasikbhai Chandubhai is a son of appellant-accused No.2-Chandubhai Nainabhai. It was alleged against them that on 12.8.1991 between 4.30 p.m. to 6.00 p.m. they shared common intention to loot golden and silver ornaments put on by the deceased-Manekben Gababhai Chamar. For that they killed deceased Manekben in the guise of selling babool trees at the outskirts of Village Varsoda, Taluka Vijapur and committed her murder by cutting her left leg and ear and looted golden and silver ornaments worth Rs.9,700/= put on by deceased Manekben on her body. Deceased Manekben belonging to Scheduled Caste, therefore, they have committed offence under Section 3(2) and (5) of the Atrocities Act as well as offence under Section 302, 392 and 397 read with Section 34 IPC. The entire prosecution case is based on circumstantial evidence. To prove its case the prosecution has examined Dr.Sangeeta Manibhai Parmar Ex.7, Ramanlal Mangaldas Patel Ex.9, Parsottambhai Hirabhai Ex.11, Maniben Govindbhai Ex.12, Vikramsinh Deepsinh Ex.13, Popatsinh Lakhmansinh Ex.14, Ambalal Baljibhai Ex.15, Bharatsinh Mukundsinh Chavda Ex.17, Thakore Bhagaji Galbaji Ex.19, Kuberji Bhikhaji Ex.21, Ratilal Mohanlal Shah Ex.23, Ramanbhai Mohanbhai Ex.25, Balibhadra Somabha Parmar Ex.27, Ratansinh Chandansinh Vaghela Ex.28 and Bhavansinh Dadusinh Vaghela Ex.35. Both the accused pleaded before the Trial court that they have been falsely implicated in this case, but in support of their defence they have neither examined themselves nor witnesses.

#. The learned Trial Judge found both the appellants-accused guilty for the offences under Sections 302, 392, 397 read with Section 34 IPC and 3(2) and (5) of Atrocities Act. Unfortunately, learned counsel Shri Parmar for the appellants was not present when the matter was called out and that both the accused were in jail

since last 10 years, therefore, with the assistance of learned APP Shri Raval we have heard and decided this appeal.

#. We have carefully gone through the evidence of the prosecution witnesses as well as reasoning assigned by the learned Judge for convicting them for the aforesaid offences. However, having carefully gone through the evidence of the prosecution witnesses and the reasoning assigned by the learned Judge, we are of the considered opinion that the prosecution has not proved its case against the appellant-accused No.2-Vaghri Chandubhai Nainabhai, therefore, in our considered opinion the order of conviction and sentence recorded by the learned Judge convicting the appellant-accused No.2-Vaghri Chandubhai Nainabhai is required to be quashed and set aside.

#. As per the prosecution case, the only evidence against the appellant-accused No.2 was discovery of the ornaments put on by the deceased-Manekben at the time of incident. Except that other important circumstances were missing in this case viz. motive and most important circumstance regarding they were seen last together just prior to the incident. However, the learned Judge was of the opinion that the discovery of ornaments put on by deceased-Manekben at the time of incident at the instance of accused No.2 was sufficient to convict him for the offence under Sections 302, 392 and 397 read with Section 34 IPC. The evidence on the point of discovery panchnama was not conclusive and we do not think it proper to rely upon such circumstances to convict the appellant-accused No.2 for the aforesaid offence. On the facts and circumstances of the case, we are of the opinion that the appellant-accused No.2 is entitled for benefit of doubt.

#. This brings us to the evidence of prosecution witnesses so far it involves appellant-accused No.1-Vaghri Rasikbhai Chandubhai. It has clearly come in the evidence of prosecution witnesses Balibhadra Somabhai Ex.27 that the ornaments recovered from the accused were of deceased-Manekben, which were put on her on the date of incident. He was staying in the locality where the deceased-Manekben was staying, therefore, he was able to say that said ornaments were of deceased-Manekben. It is not the case of the accused that the ornaments belonging to them. Hence, the prosecution was able to establish first circumstance that the ornaments which were recovered from the accused persons belonging to the deceased. It has clearly come in the evidence of the other prosecution witnesses Vikramsinh Deepsinh Ex.13, Popatsinh Lakhmansinh Ex.14, and Maniben Govindbhai

Ex.12, who were staying in the same mohalla where deceased-Manekben was staying, and that accused No.1 along with his father accused No.2 used to come to the house of deceased-Manekben quite often. On the date of incident also the accused called deceased at the outskirts of village Varsoda. They had seen the deceased along with accused No.1 at the outskirts of village Varsoda just prior to the incident.

#. Maniben Govindbhai Ex.12 has clearly stated that after deceased-Manekben went along with accused No.1-Vaghri Rasikbhai Chandubhai, she had not returned back to her home. She was cross-examined at a great length but nothing specifically has come in her cross-examination. Evidence of Maniben Govindbhai has been duly corroborated on this point by two other important witnesses Vikramsinh Deepsinh Ex.13, Popatsinh Lakhmansinh Ex.14. They were coming along their animals in the evening at about 4.00 to 4.30 p.m. where they had seen accused No.1 with deceased-Manekben. Nothing specifically has come out in their cross-examination. After the deceased-Manekben and accused No.1 were seen last together, the dead body of deceased-Manekben was found from the outskirts of village Varsoda.

#. Merely because name of both the witnesses Vikramsinh Deepsinh Ex.13, Popatsinh Lakhmansinh Ex.14, have not been given in the FIR would not falsify their version that they had seen deceased-Manekben going along with accused No.1-Vaghri Rasikbhai Chandubhai at the outskirts of village Varsoda on that evening. The incident in question took place on 12.8.1991, whereas, their statements were recorded by police on 14.8.1991, therefore, it cannot be said that there was unreasonable delay on the part of the Investigation Officer in recording the statement of Vikramsinh Deepsinh Ex.13, Popatsinh Lakhmansinh Ex.14. They were neither related to the deceased nor hostile to the accused, therefore, in our opinion their evidence is wholly reliable and trustworthy.

#. It is true that Gababhai Chamar, husband of the deceased-Manekben has not been examined by the prosecution but it is clear from the judgment of the learned Trial Judge that he is 100 years old and not able to listen or see properly, therefore, non-examination of Gababhai Chamar, husband of deceased-Manekben would not be fatal to the prosecution.

#. Weapon used in the commission of offence is recovered at the instance of the accused No.1. The ornaments which

were looted by the accused No.1 were discovered by police, on the information given by accused No.1, which were simply produced by the accused No.2. We have already stated that accused No.2 is entitled for benefit of doubt because merely showing the ornaments would not be sufficient to convict him. However, most important circumstance that the discovery of ornaments were effected at the instance of accused No.1 was sufficient to complete the chain of circumstances. Similarly, the conduct of the accused No.1 prior and after the incident was sufficient to come to the conclusion that it is accused No.1 alone could have committed the murder of deceased-Manekben for the purpose of looting the ornaments put on by her at the time of incident.

In view of the above discussion, this appeal is allowed and the appellant-accused No.2-Chandubhai Nainabhai and the judgment and order of conviction and sentence passed by the learned Trial Judge convicting him for the offence punishable under Section 302 read with Section 34 of IPC is hereby quashed and set aside. He is ordered to be set at liberty forthwith, if not required in any other case. However, the appeal of the appellant No.1-Vaghri Rasikbhai Chandubhai is hereby dismissed and the order of conviction and sentence passed by the learned Judge convicting him for the offence under Section 302 IPC and sentencing him to suffer him life imprisonment is hereby confirmed.

(B.J.Shethna, J.)

(D.P.Buch, J.)

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